

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:16-cv-03088-ELR
	)	
STATE OF GEORGIA,	)	
	)	
Defendant.	)	
	)	

**JOINT STATUS REPORT**

NOW COME Plaintiff United States of America (“United States”) and Defendant State of Georgia (“State”), pursuant to the Court’s September 14, 2021 Order [Doc. 117] (the “September 14 Order”), and hereby file an updated Joint Status Report outlining the parties’ progress in discovery and identifying outstanding issues that may affect the timeline for completing discovery.

This Court is aware of the parties’ claims and defenses. In brief, the United States alleges that the State, by delivering educational services to students with disabilities in segregated settings, via the Georgia Network for Educational and Therapeutic Support (“GNETS”) Program, violates the Americans with Disabilities Act. The State maintains, among other things, that it cannot provide the relief the

United States seeks because Georgia’s local school districts, through their IEP teams, determine whether a student requires GNETS program services and because the school districts—and not the State—operate the GNETS programs (of which no individual employed by the State is part).

In light of the breadth of these issues, the parties seek substantial discovery. The parties have served and anticipate serving discovery requests for electronically stored information (“ESI”) and other documents; interrogatories; and numerous deposition notices and third-party subpoenas. The parties have also begun undertaking other discovery necessary to support expert opinions, including site visits, and, as discussed below, will continue to pursue such discovery.

This Court’s September 14 Order granted the parties’ joint motion to extend the period for fact discovery through and including September 12, 2022, and required the parties to submit quarterly status reports, of which this is the first. In addition, the parties committed to work cooperatively to develop detailed interim deadlines to ensure that they make adequate progress and remain on track to complete discovery within the allotted period. [Doc. 116 at 6-7].

## **I. Steps Taken by the Parties to Complete Discovery**

Prior status reports provide extensive detail regarding discovery efforts undertaken before the September 14 Order. Below, the parties describe their respective discovery activities since the order.<sup>1</sup>

The parties also report that they have entered into two stipulations regarding discovery. First, the parties have entered into a stipulation regarding the authentication of unstamped documents produced by regional GNETS programs in response to Rule 45 subpoenas the parties have issued or may issue to such programs via their fiscal agents. The parties will present that stipulation to the Court in connection with the pretrial order. Second, the parties have agreed, pursuant to Fed. R. Civ. P. 30(b)(4), that depositions may be taken remotely, where the notice so specifies, and that counsel may choose to attend remotely.

### **A. Steps Taken by the United States**

The United States continues to seek discovery and to respond to discovery requests with the goal of meeting the Court's fact discovery deadline.

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<sup>1</sup> The following 17 ECF entries reflect the various discovery requests and responses: Docs. 74, 75, 84, 85, 89, 90, 99, 101, 102, 108, 109, 110, 111, 112, 113, 115, 121, 122, 123, 124, and 125.

## **1. Production of ESI**

The United States has continued to work cooperatively with the State regarding ESI production. In response to the State's concerns about burden, the United States prioritized custodians likely to have the most responsive information. On January 13, 2021, at the request of the State, the United States provided a first list of 25 priority custodians whose documents and ESI would be collected using search terms previously agreed upon by the parties. In June 2021, the United States agreed to certain modifications of those search terms following the State's proposal to narrow the agreed-upon search terms. On November 1, 2021, the United States provided the State with a list of 24 second-round priority custodians. Shortly thereafter, the United States provided the State with a list of narrowed search terms for a subset of the second-round priority custodians. The United States is currently examining whether it can productively narrow any additional search terms for its second-round priority custodian list, so that the State may provide responsive ESI by a mutually agreeable date.

Pursuant to these arrangements, on December 1, 2021, the State produced further ESI in response the United States' first list of priority custodians, which the State describes as substantially completing that production. The United States'

litigation support team is currently processing the data so that it can be uploaded to a platform for review and confirmation of the production.

## **2. Depositions**

The United States has noticed the deposition of Georgia Department of Behavioral Health and Developmental Disabilities employee Danté J. McKay for January 6, 2022. The United States will review the ESI and other documents produced by the State to prepare for and conduct additional depositions over the fact discovery period.

## **3. Service of Subpoenas for Documents on and Expert Site Visits to GNETS Programs**

In July 2021, the United States approached the State to ask if the State would work with the United States to coordinate expert visits to the GNETS programs for classroom observation. The State has taken the position in this litigation that it has no control over the GNETS programs. Accordingly, the United States directly approached counsel for the fiscal agent for each of the regional GNETS programs. Thereafter, in August and September 2021, the United States served 18 Rule 45 subpoenas on various regional GNETS programs via their fiscal agents for production of documents. The United States continues to work with those programs and fiscal agents to ensure full compliance with the document subpoenas.

The United States then sought, cooperatively, to arrange site visits for its experts to inspect selected GNETS programs. Several GNETS programs acceded to such voluntary arrangements.<sup>2</sup> As a courtesy, the United States gave the State advance notice of each such cooperative site visit, and the State attended. In November 2021, the United States' experts completed a week-long trip, making such cooperative site visits to 3 regional GNETS programs (including 4 centers and 8 school-based locations).

An issue has arisen, however, concerning long-planned site visits negotiated with counsel for certain GNETS programs' fiscal agents and local education agencies ("LEAs"). The United States' experts were scheduled to conduct a second week-long trip in early December 2021 to observe the facilities, programs, and educational environments connected to the Northwest Georgia, North Metro, and HAVEN regional GNETS programs, among others. At the last minute, however, counsel for the LEAs and fiscal agents for those programs sought to impose extreme

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<sup>2</sup> For each such voluntary site visit, upon request, the United States provided complete identification of attendees, including its experts, to counsel for the regional GNETS program, either in advance of the visit or on site. The deadline for the United States disclosure of experts has not yet been set.

and unwarranted restrictions on the experts' inspections.<sup>3</sup> The experts proceeded with 1.5 days of the originally-scheduled five-day trip, making site visits to 1 regional GNETS program (including 2 centers and 2 school-based locations), represented by other counsel. At one of the two centers, the experts were permitted

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<sup>3</sup> These restrictions included, among other things, preventing the United States from having more than one expert attend the site visit when counsel is aware that the United States uses two experts for the reviews, limiting the number of GNETS classrooms an expert would be permitted to observe within a given facility to three classrooms (regardless of the total number of GNETS classrooms operated by the facility), requiring that the three GNETS classrooms selected for observation be chosen by a site-based administrator rather than the experts, capping observations within each classroom to five minutes, and prohibiting experts from taking any photographs of the physical facilities where GNETS students are served. These restrictions were first proposed on the evening of Thursday, December 3, 2021, before site visits scheduled to commence on Monday, December 6, 2021. Although counsel for the fiscal agent for HAVEN had previously reached agreement with counsel for the United States on site visit protocol for that program's facilities, on the afternoon of December 6, 2021 counsel sought to condition continued cooperation in the site visits—scheduled for December 10, 2021—on the United States' agreement to a slightly modified version of the December 3rd restrictions. While that modified version increased classroom observation time to 10 minutes and permitted observation of a maximum of four GNETS classrooms per facility, it continued to restrict the United States to one expert, give site-based administrators authority to select the classes that would be observed, and prohibit the experts from taking photographs of the physical facilities. Programs previously and subsequently visited by the United States generally did not seek or impose comparable restrictions, and those visits occurred without incident.

only to tour the physical facility but were unable to conduct any classroom observations.<sup>4</sup>

The United States will continue to make good-faith efforts to work cooperatively with counsel for the fiscal agents and LEAs involved with regional GNETS programs to plan and conduct site visits that afford its experts the reasonable access to facilities, programs, and educational environments that they need to render their opinions. Where this is not feasible, the United States will proceed with site visits via third-party subpoenas and will pursue any additional relief that may be required.

## **B. Steps Taken by the State of Georgia**

The State continues to seek discovery and respond to discovery requests with the goal of meeting the Court's fact discovery deadline.

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<sup>4</sup> The United States had previously arranged all site visits for the South Metro regional GNETS program with counsel for the fiscal agent. On the day of the visit to one center in this regional GNETS program, an attorney representing the Henry County School District and Henry County Board of Education, where the facility was located and whose students are served, prohibited the United States' experts from observing classrooms. Henry County's attorney indicated to the United States on site and via follow-up email that she had been aware of the planned site visit for approximately six days. On site, the Henry County attorney also advised that she had reached out to lawyers for the State to seek clarification regarding the site visit. No party ever notified the United States in advance of any concerns about the planned visit.

## **1. Production of ESI**

On December 1, 2021, the State substantially completed the review and production of the Round 1 priority custodians identified by the United States based on agreed upon search terms. The State's December 1, 2021 production contained a total of 291,485 documents, and 2,332,750 pages, divided into volumes 19 through 22. To date the State has produced a total of 358,111 documents, and 2,599,032 pages, divided into volumes 1 through 22.

Name	First Bates Value	Last Bates Value	Total Document Count	Total Images Count
GNETS-I_VOL001	GA00000001	GA00000018	18	18
GNETS-I_VOL002	GA00000019	GA00000367	64	349
GNETS-I_VOL003	GA00000368	GA00000378	11	11
GNETS-I_VOL004	GA00000379	GA00000494	5	116
GNETS-I_VOL005	GA00000495	GA00000782	159	288
GNETS-I_VOL006	GA00000783	GA00009198	2270	8416
GNETS-I_VOL007	GA00009199	GA00028492	4526	19294
GNETS-I_VOL008	GA00028493	GA00045196	5273	16704
GNETS-I_VOL009	GA00045197	GA00054272	2852	9076
GNETS-I_VOL010	GA00054273	GA00072114	5124	17842
GNETS-I_VOL011	GA00072115	GA00096935	6601	24821
GNETS-I_VOL012	GA00096936	GA00122995	5774	26060
GNETS-I_VOL013	GA00122996	GA00137166	4329	14171
GNETS-I_VOL014	GA00137167	GA00164528	5758	27362

<b>GNETS-I_VOL015</b>	GA00164529	GA00222413	14341	57885
<b>GNETS-I_VOL016</b>	GA00222414	GA00222414	1	1
<b>GNETS-I_VOL017</b>	GA00222415	GA00234359	3094	11945
<b>GNETS-I_VOL018</b>	GA00234360	GA00266282	6426	31923
<b>GNETS-I_VOL019</b>	GA00266283	GA00963743	144673	697461
<b>GNETS-I_VOL020</b>	GA00963744	GA00964767	96	1024
<b>GNETS-I_VOL021</b>	GA00964768	GA02412005	129386	1447238
<b>GNETS-I_VOL022</b>	GA02412006	GA02599032	17330	187027
			<b>358,111</b>	<b>2,599,032</b>

As stated by the United States, on November 1, 2021, the United States provided the State with a list of 24 second-round priority custodians. To date, the State has collected the documents pertaining to the round 2 custodians and has provided search term reports to the United States to determine if the search terms can be narrowed further. The State has also reserved objections to these productions as well as future productions, but the issue is not ripe.

## **2. Depositions**

The United States has noticed the deposition of Georgia Department of Behavioral Health and Developmental Disabilities employee Danté J. McKay for January 6, 2022.

### **3. GNETS Site Visits**

The State has worked with, and continues to work with, the United States to attend site visits of selected GNETS sites. Under the current practice, the United States coordinates tours with their experts<sup>5</sup>, and local school districts. Thus far, the State has been able to attend the tours. At one tour, the United States refused to disclose the names of experts in attendance. Further, because the State has not been party to the discussions between the United States and the local districts, the State can neither agree nor disagree, with the United States' description of the site visits as "long planned." Further, the objections raised by the local school districts are theirs alone but do not appear "extreme" to the State under the circumstances and prior experience.

In November 2021, the State completed a week-long trip, touring 3 regional GNETS sites located in: (1) Macon, Georgia, (2) Columbus, GA, and (3) Albany, GA. These 3 regional sites included 4 centers and 8 school-based locations. (*See below*)

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<sup>5</sup> The State reserves the right to challenge any designations of the individuals as experts.

**State and United States Team 1**

<b><u>Name of GNETS Site</u></b>	<b><u>Date of GNETS Site Tour</u></b>	<b><u>Location of GNETS Site</u></b>
1. Elam Alexander Academy (Burke Center Campus)	11/15/2021	Macon, GA
2. LH Williams Elementary	11/15/2021	Macon, GA
3. Elam Alexander Academy (Adolescent Services @ Southwest Site)	11/15/2021	Macon, GA
4. Southwest High School (GNETS School-Based location)	11/16/2021	Macon, GA
5. Miller Middle School (GNETS School-Based location)	11/16/2021	Macon, GA
6. Crawford County High School	11/16/2021	Roberta, GA
7. Crawford Middle School	11/16/2021	Roberta, GA
8. Oak Tree Center	11/17/2021	Albany, GA
9. Merry Acres Middle School (Oak Tree school-based location)	11/17/2021	Albany, GA
10. Westover High School (Oak Tree school-based location)	11/17/2021	Albany, GA
11. Woodall Center	11/18/2021	Columbus, GA
12. Carver High School (Woodall school-based location)	11/18/2021	Columbus, GA

**State and United States Team 2**

<b><u>Name of GNETS Site</u></b>	<b><u>Date of GNETS Site Tour</u></b>	<b><u>Location of GNETS Site</u></b>
1. Oak Tree Center	11/15/2021	Albany, GA

2. Merry Acres Middle School (Oak Tree school-based location)	11/15/2021	Albany, GA
3. Westover High School (Oak Tree school-based location)	11/15/2021	Albany, GA
4. Woodall Center	11/16/2021	Columbus, GA
5. Carver High School (Woodall school-based location)	11/16/2021	Columbus, GA
6. Elam Alexander Academy (Burke Center Campus)	11/17/2021	Macon, GA
7. LH Williams Elementary	11/17/2021	Macon, GA
8. Elam Alexander Academy (Adolescent Services @ Southwest Site)	11/18/2021	Macon, GA
9. Southwest High School (GNETS School-Based location)	11/18/2021	Macon, GA
10. Miller Middle School (GNETS School-Based location)	11/18/2021	Macon, GA
11. Crawford County High School	11/18/2021	Roberta, GA
12. Crawford Middle School	11/18/2021	Roberta, GA

Per communications between the United States and the LEAs, the State attended a second set of GNETS site visits, in early December 2021. As stated by the United States, the LEAs have outlined various limitations and restrictions

pertaining to the second set of GNETS site visits. As indicated, the State was not involved in planning the GNETS site visits and as such it does not know the timeline of the various discussions that occurred between the United States and the LEAs regarding the scheduling and limitations imposed by the LEAs.

The State visited (1) regional GNETS program (including 2 centers and 2 school-based locations) during the week of December 6th. (*See below*) To the best of its knowledge, Counsel for Defendants has not been contacted by attorney Megan Rittle or Henry County. The State will continue to attempt to attend any future GNETS site visits scheduled by the United States, and the State reserves the right to insist on reaching dates that are mutually agreeable to insure the State's participation.

<u><b>Name of GNETS Site</b></u>	<u><b>Date of GNETS Site Tour</b></u>	<u><b>Location of GNETS Site</b></u>
1. South Metro GNETS Center (JB Henderson Elementary School)	12/08/2021	McDonough, GA
2. South Metro GNETS Center (Ash Street Center)	12/09/2021	Forest Park, GA
3. Edmonds Elementary (South Metro GNETS School Based location)	12/09/2021	Forest Park, GA
4. Forest Park High School (South Metro	12/09/2021	Forest Park, GA

GNETS School Based location)		
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## II. Outstanding Issues

Moving forward, a large volume of ESI and other documents remain to be produced by the State and reviewed by the United States. The parties will jointly work to narrow custodians and focus search terms in order to facilitate the production of ESI and other documents from second round custodians by a mutually agreed upon date, and further documents thereafter.

The parties will also cooperate to schedule the many depositions that will need to be taken to develop the evidentiary record, though the ability to move forward with depositions depends—in large part—on the complete production and subsequent review of relevant documents from each deponent’s custodial files. The parties are prepared—and, as described above, have reached an appropriate stipulation—to conduct these depositions virtually, if needed.

As discussed above, in Part I.A.3, the United States is working to resolve issues relating to site visits for its experts to certain GNETS and general education programs. If those issues cannot be resolved cooperatively, the United States will proceed by subpoena and, in the event necessary, bring these issues to the Court.

Finally, while the United States anticipates that its experts will continue to conduct additional site visits during the next several months, those visits are contingent on the parties' ability to conduct the visits safely and in accordance with any applicable COVID-19 pandemic protocols.

### **CONCLUSION**

Over the past three months, since entry of the September 14 Order, the parties have cooperated to make significant, tangible progress with respect to document production and anticipate that this progress will continue. The parties will work diligently and cooperatively to meet the September 12, 2022 fact discovery deadline and will further report to this Court on March 10, 2022.

Respectfully submitted this 10th day of  
December, 2021.

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**L.R. 7.1(D) CERTIFICATION**

I certify that this Joint Status Report has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this brief has been prepared using 14-pt Times New Roman Font.

*/s/ Aileen Bell Hughes*  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the foregoing document with the Clerk of Court using the CM/ECF system, which automatically sent counsel of record e-mail notification of such filing.

Respectfully submitted this 10th day of December, 2021.

*s/ Aileen Bell Hughes*  
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